

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion, pursuant to G.L. c. 159, §§ 12 and 16, into the regulations, practices, equipment, appliances, and service of Network Plus, Inc.

D.T.E. 02-15

**STIPULATION AND AGREEMENT FOR
DISCLOSURE OF PROPRIETARY INFORMATION**

It is hereby STIPULATED AND AGREED by the undersigned counsel for the parties that the procedure for handling proprietary information in this proceeding shall be as follows:

1. Information deemed by a party to be proprietary in nature, including responses to discovery requests, shall be so marked by stamp or otherwise clearly identified as such. Proprietary information described herein means trade secrets and other confidential, non-public, or privileged information.

2. The examination of the proprietary data provided to a party shall be solely by the counsel of record in this proceeding and/or any lawyer employed by or any employee of said counsel in connection with this proceeding, expert consultants retained by a party in connection with this proceeding, Department Staff and any employee of a party whose review of the proprietary information is necessary for the preparation and conduct of this proceeding, provided such persons have executed an Acknowledgment of this Stipulation in the form annexed hereto as Attachment 1 and have provided the submitting party with an executed copy of the Acknowledgement. The submitting party may object to disclosure of proprietary information to such employee and/or expert consultant for good cause. No other disclosure shall be made to any person or entity except with the express written consent of counsel for the submitting party.

3. The proprietary data delivered or otherwise made available to a party pursuant to this Agreement, any photographic or other copies made thereof, as well as notes taken and other information obtained as a result of examination of the proprietary data, shall be disclosed only to persons who have executed the requisite Acknowledgment, shall be kept in confidence, shall be used only in connection with this proceeding before the Department, shall not be disclosed to anyone involved in marketing decision making for any party, and shall not be opened to public inspection. No person who may be entitled to receive, or who is afforded access to any proprietary information shall use or disclose such information for any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

4. A party shall have no obligation to preserve the confidential nature of any information that it can demonstrate and document to the submitting party in advance of disclosure that the subject information:

- a) was previously known to the party free of any restriction on use and disclosure; or
- b) is received from a third party without restrictions on use or disclosure and without breach of any terms of this Stipulation;
- c) is disclosed to third parties by the submitting party without restrictions on use and disclosure; and
- d) is or becomes publicly available by authorized disclosure by the submitting party without any restrictions on use or disclosure; or
- e) is independently developed by the party; or
- f) is approved for release by written authorization of the submitting party.

5. If documents and materials designated as proprietary in nature are to be included in any papers filed with the Department in this proceeding, such papers shall be appropriately labeled and shall be filed under seal until further order of the Department.

6. It is expressly agreed that this Stipulation is being entered into for the purpose of facilitating the exchange of information and discovery. In the event that any party to this

proceeding seeks to use proprietary information in the course of the hearings or as part of the record, such party shall provide reasonable notice to the submitting party of such intended use. It is agreed that the submitting party may seek to seal that portion of the proceeding containing proprietary information from public disclosure pursuant to CMR _____. The execution of this Stipulation does not foreclose any party from arguing any position as to whether the proprietary information shall be made subject to a Protective Order or sealed from the public record, nor does it prejudice the right of any party to seek an order of the Department to the effect that a document originally labeled "proprietary" by a submitting party is in fact not so.

7. This Stipulation between the parties shall not:

a) Operate as an admission for any purpose by any party to this proceeding that any documents or information produced pursuant to this Stipulation are admissible or inadmissible in the hearings of this proceeding;

b) Prejudice in any way the right of a party at any time to seek appropriate relief, on notice to all parties in the exercise of its discretion, for violations of any provision of this Stipulation, including but not limited to, an unauthorized divulgence of proprietary information, or the contents thereof, to any person not bound by this Stipulation or for purposes other than those contemplated by this Stipulation; or

c) Prejudice in any way the right of a party to withhold production of documents pending review by the Department.

8. No party shall have access to any information claimed by the submitting party to be proprietary until an executed copy of this Agreement has been provided to the submitting party.

9. Upon completion of this proceeding and FCC, administrative or judicial proceeding arising from this proceeding, the parties shall have the option of either destroying, in an appropriate manner, or returning to the submitting party all documents or material (and copy thereof) designated as proprietary in nature, including notes that contain proprietary information.

If such documents are to be destroyed by a party, counsel for that party shall certify such destruction to counsel for the submitting party.

Dated: _____

By: _____

Dated: _____

By: _____

Dated: _____

By: _____

Dated: _____

By: _____

Dated: _____

By: _____

Attachment 1

**ACKNOWLEDGEMENT OF TERMS OF PROTECTIVE AGREEMENT
FOR DISCLOSURE OF PROPRIETARY INFORMATION**

I HEREBY ACKNOWLEDGE AND AFFIRM THAT:

(1) I have read the attached Stipulation And Agreement For Disclosure of Proprietary Information concerning the proceeding docketed as DTE 02-15;

(2) I qualify under its provisions as a person who may have access to the information designated as proprietary;

(3) I am authorized to sign this Acknowledgment and Affirmation on behalf of XO Massachusetts, Inc.; and

(4) I will abide by the terms and conditions of that Stipulation.

Further, I understand that any violation of that Stipulation may result in liability for damages and penalties as provided by law.

Karen Nations

Title

Dated: _____